

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
05 MAR 21 AM 10:51

DEPARTMENT: Engineering Department

AGENDA DATE: March 29, 2005

CONTACT PERSON/PHONE: Irene Ramirez, ext. 4431

DISTRICT(S) AFFECTED: 2

SUBJECT:

That the City Manager be authorized to sign a Construction Management Service Agreement by and between the **CITY OF EL PASO** and **PARAGON PROJECT RESOURCES, INC.**, for environmental engineering services for a period of two (2) years in an amount not to exceed **ONE HUNDRED TWENTY SIX THOUSAND THREE HUNDRED AND FORTY-SEVEN AND NO/100 DOLLARS (\$126,347.00)**. (District No. 2)

BACKGROUND / DISCUSSION:

The Consultant shall provide construction management and inspection services for the **EPIA Pavement Rehabilitation Project**. The Consultant shall follow all Federal Aviation Administration guidelines and requirements. See attached Scope of Services for details of the type of services covered.

PRIOR COUNCIL ACTION:

City Council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:

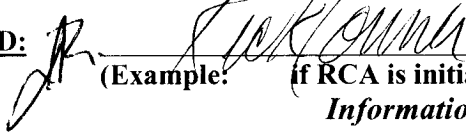
This item will be funded with Airport funds. The item has been budgeted. The funding information is G620AIP0022-62620031-11511-508027. A budget transfer is not required.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: 
(Example: _____ if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA: _____

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Construction Management Services Agreement by and between the **CITY OF EL PASO** and **PARAGON PROJECT RESOURCES, INC.**, for a project known as “**Construction Management Services for the EPIA Pavement Rehabilitation Project**” for a period of seven (7) months with an option to renew for three additional months in an amount not to exceed **ONE HUNDRED TWENTY SIX THOUSAND THREE HUNDRED AND FORTY-SEVEN AND NO/100 DOLLARS (\$126,347.00)**. (District No. 2)

ADOPTED this ____ day of _____, 2005.

THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Rick Connor, P.E.
City Engineer

THE STATE OF TEXAS §

§ AN AGREEMENT FOR CONSTRUCTION

COUNTY OF EL PASO § MANAGEMENT SERVICES

THIS AGREEMENT made this _____ day of _____, 2005 by and between **THE CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter called the "Owner", and **Paragon Project Resources, Inc.**, a Texas corporation, hereinafter called the "Engineer."

WHEREAS, the Owner intends to engage the Engineer to perform construction management services for a Project known as "Construction Management Services for the EPIA Pavement Rehabilitation Project" hereinafter called the "Project," and further described in Attachment "A", which is attached hereto and made a part hereof for all purposes;

NOW, THEREFORE, the Owner and Engineer for the consideration hereinafter set forth agree as follows:

I. BASIC SERVICES OF THE ENGINEER

A. General

1. The Engineer agrees to perform professional construction management services as hereinafter stated in Attachment "A" that is attached hereto and made a part hereof for all purposes, to the full satisfaction of the Owner. In addition thereto, the Engineer warrants to the Owner that the Engineer will use reasonable efforts to insure that the Project assigned to the Engineer for construction management shall be built on time, within budget and of a quality no less than called for by the Project's construction documents, including but not limited to, plans and specifications.
2. The Engineer shall serve as the Owner's professional representative and shall give consultation and advice to the Owner during the performance of his services.
3. The Owner is relying upon the skill and expert knowledge of the Engineer to furnish the Owner with an accurate product and to insure that the Project is built on time, within budget and at a quality level within specifications. The Owner's review of any documents prepared by the Engineer is only general in nature, and its obligation to approve and accept the work in no way relieves the Engineer of responsibility for any specific deficiencies in his work product. Owner's approval and/or acceptance of the Project shall in no way relieve the Engineer of responsibility to insure no deficiencies in the Project overseen by the Engineer.

B. Work Products/Standards

All work prepared by the Engineer following the Owner's written authorization to proceed for the Project, shall:

1. Be delivered as electronic digital data contained on electronic media and in a CAD format approved by the Owner.
2. Include a hard copy consisting of original field books and drawings, to specified scale, and all other Project documents.
3. Upon completion of all work with respect to the Project, the Engineer shall prepare and deliver to the Owner the number of documents negotiated for the Project.

II. ADDITIONAL SERVICES OF THE ENGINEER

A. General

If authorized in writing by the Owner, the Engineer shall perform or obtain additional services of the following types which are not covered by Section herein, which shall be paid for by the Owner as indicated in Section V, Part B.:

1. Provide additional services due to significant changes in the general scope of the Project.
2. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.
3. Provide additional services in connection with the Project not otherwise provided for this Agreement except where those services are required as a result of negligence or other fault on the part of the Engineer.

III. THE OWNER'S RESPONSIBILITIES

The Owner shall:

- A. Provide available information as to its requirements in connection with the Project.
- B. Make all known information pertain to the Project, including previous reports and other data relative to cost estimate.
- C. Obtain access to and make provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform his work under this Agreement.

- D. Review Design Documents/Reports prepared by the Engineer and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of the Engineer.
- E. Designate the City Engineer of the City of El Paso as the Owner's representative with respect to the Engineering Services to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment, elements and systems pertinent to the work covered by this Agreement.
- F. Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any defect in connection with the Project.
- G. Furnish or direct the Engineer to provide at the Owner's expense necessary additional services as stipulated in Section II of this Agreement or other services as required by the Owner.

IV. PERIOD OF AGREEMENT AND SERVICES

- A. This Agreement comes into effect and full force, and is legally binding, on the date noted above. This Agreement shall remain in full force for a period of **seven months with the option to renew for three additional months.**
- B. The Engineer shall begin work upon a written Notice to Proceed issued by the City Engineer. The period of service for the Project shall be for seven months with the option to renew for three additional months and shall be specified in the written Notice to Proceed. The Engineer shall complete the construction management services and Design Document/Reports within the designated time frame for the Project stated in the written Notice to Proceed.

V. PAYMENTS TO THE ENGINEER

A. Payments for Basic Services of the Engineer Under Section I

- 1. Compensation of the Engineer:
 - a) The Owner shall pay the Engineer for requested services in accordance with the fee schedule that is attached hereto as Attachment "B" and incorporated herein for all purposes.
 - b) The total value for the term of the Agreement shall not exceed **ONE HUNDRED TWENTY SIX THOUSAND THREE**

**HUNDRED AND FORTY-SEVEN AND NO/100 DOLLARS
(\$126,347.00).**

2. The work to be prepared under this Agreement may fall under various funding programs including general revenue, federal grants and funds and bond authorization of various types. Because the funding source for this Project is a federal grant, the Engineer hereby agrees that all applicable grant assurances will be complied with.
3. Payment on account of said fees for the basic services provided in Section V, Part A.1., shall be made upon presentation of the Engineer's detailed statement to the Owner at the address shown herein, and its written approval by the Owner. Payments shall be made on a monthly basis. The Engineer's statement shall set forth the level of each staff member performing work, the number of hours performed, a description of the work performed, together with copies of receipts or other evidence satisfactory to the Owner's representative. The Engineer's failure to furnish such supporting data shall constitute Engineer's waiver and release of any claim against the Owner with respect to such disputed billing item.

B. Payments for Additional Services of the Engineer Under Section II.

If authorized by written amendment to this Agreement

1. The Owner shall pay the Engineer for additional services performed by personnel assigned to the regularly established office of the Engineer at the hourly rates established in Attachment "B" hereof, plus the reasonable actual cost of the reimbursable expenses as hereinafter defined.
2. Reimbursable expenses shall mean the reasonable actual expense of transportation and subsistence of principals and employees while traveling in connection with the Project, field office expenses, toll telephone calls and telegrams, reproduction of reports, and similar Project related items. Such expenses must be authorized in writing by the Owner to be eligible for reimbursement.
3. Payments for additional services shall be made monthly upon presentation of the Engineer's detailed statement or invoice and supporting documentation in accordance with section V, Part A.2, and its written approval by the Owner.

C. General

1. The payroll cost of salaries and wages used as a basis for payment under Section V, Part B.1., shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including but not limited to social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.
2. If this Agreement is terminated, the payments to be made in accordance with Section V, Part A.2, the Engineer shall be paid for services performed on the basis of mutually reasonable estimate of the portion of services completed prior to termination. In the event of any termination, the Engineer shall be paid to the extent services performed by him are completed and payment for such services is due, including payment for additional services under Section V, Part B. Any previous payments made to the Engineer shall be credited to the payments due under this Agreement. Such payment to the Engineer upon termination shall be full and final payment to the Engineer and any employees, subcontractors, or independent contractors employed by the Engineer, and the Engineer shall not be entitled to any other claims or damages against the Owner, including but not limited to lost profits, office expenses, or overhead expenses. Any previous payments made to the Engineer shall be credited to the payments due under this Agreement.
3. If prior to termination of this Agreement, any work by the Engineer is suspended in whole or in part for more than **three (3) months**, or abandoned, after written notice from the Owner, the Engineer shall be paid for services performed on account of his work prior to receipt of such notice from the Owner as provided in Section V, Part C.2., for termination of the work.

1. VI. GENERAL CONSIDERATIONS

A. Termination

This Agreement may be terminated without cause for convenience of the Owner by giving **fifteen (15 days) written notice**, as provided herein. In the event of failure to perform in accordance with the terms herein, this Agreement may be terminated by the Owner by giving **seven (7) days written notice**, as provided herein. If this Agreement is so terminated, the Engineer shall be paid as provided in herein. The termination of this Agreement by the Owner shall not be construed as a release of any claims that the Owner may be lawfully entitled to assert against

the Engineer and the Engineer shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the Agreement by the Engineer for the purpose of setoff until such time as the exact amount of damages due the Owner from the Engineer is determined.

B. Ownership of Documents

Design documents/reports, studies, tracings and any other recordations or documents prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the Owner prior to payment to the Engineer for work under this Agreement. If this Agreement is terminated at any time for any reason prior to payment to the Engineer for work under this Agreement, all reports, studies, tracings and any other recordations prepared or obtained under the terms of this Agreement shall upon termination be delivered to and become the property of the Owner prior to payment to the Engineer as provided in Section V, Part C.3. Sketches, charts, computations, and all other data prepared for and under this Agreement shall be made available to the Owner upon request and without restriction on their use, or further compensation to the Engineer. The Owner in requiring ownership of the above listed documents hereby releases the Engineer from all responsibility in connection with their use on any project other than their use on this Project.

C. Insurance

The Engineer shall secure and maintain at his expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' compensation Insurance as shall protect him from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the performance of his services under this Agreement. Provided, the Engineer shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)** for one person and **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. The Engineer shall procure and shall maintain at his expense Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Engineer, its principals or officers, agents, or employees in the performance of this Agreement, whenever requested by the Owner.

The Engineer shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to Owner. All policies required by this Agreement, with the exception of Workers' compensation Insurance and Professional Liability Insurance, shall name the Owner, its officials, servants, agents, and employees as additional insureds. The Engineer shall, prior to the execution of this Agreement, furnish the Owner with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with Owner copies of said policies, if requested by Owner. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to Owner **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

D. Successors and Assigns

This Agreement shall be binding on the Owner, its successors and assigns, and on the Engineer, its partners, successors, executors, administrators, legal representatives, and assigns. Neither the Owner nor the Engineer shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Owner.

E. Compliance with Laws

The Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work covered hereunder.

F. Change of Legal Status

In the event that there is a change in any of the legal status of the entity that has entered into this Agreement, including but not limited to the dissolution of a partnership or a corporate entity, the owner shall have the right to: 1) immediately terminate this Agreement for convenience, or 2) consent to the change in the legal status and continue under this Agreement, or 3) enter into an Agreement with any person, corporation or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

I. SPECIAL PROVISIONS

A. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. The Engineer agrees to accept and adhere to the schedule established on the project basis and per the

written Notice to Proceed. Failure of the Engineer to adhere to this schedule without due cause, approved in writing by the City Engineer, shall cause damage to the City which the Engineer agrees to compensate at the rate of **ONE HUNDRED AND NO/10 DOLLARS (\$100.00) per day**, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Engineer and the Owner, that the date of beginning and the time for completion as specified in the Agreement of the work to be done hereunder are **ESSENTIAL CONDITIONS** in the Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the **"Notice to proceed"**. The Engineer agrees that said work shall be prosecuted regularly, diligently, and uninterrupted as such rate of progress as shall ensure completion thereof within the time specified. It is expressly understood and agreed, by and between the Engineer and the Owner, that the time for the completion of the work described herein is a reasonable time for he completion of the same.

If the said Engineer shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Engineer does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of Agreement as hereinafter set forth, for each and every calendar day that the Engineer shall be in default after the time stipulated in the Agreement for completing the work.

The said amount is fixed and agreed upon by and between the Engineer and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain.

It is further agreed that **TIME IS OF THE ESSENCE** in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this Agreement. Additionally, time shall be of the essence where under this Agreement an additional time is allowed for the completion of any work. However, when the Owner determines in writing that the Engineer is without fault and the reasons for a time extension are acceptable, the Engineer shall not be charged with liquidated damages or any excess cost.

B. Equal Employment Opportunity

In providing services under this Agreement, the Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The Engineer shall take affirmative action

to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Engineer shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin. The Engineer shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

C. **Obligations of the Engineer with Respect to Certain Third Party Relationships**

The Engineer shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to such assistance is being provided under this Agreement.

D. **Interest of Members of Local Governing Body, or Other Public Officials**

No member of the governing body of the City of El Paso, and no other public official of the City of El Paso who exercises any function or responsibility with respect to the Project shall during his tenure or for **one (1) year** thereafter, have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement

E. **Law Governing Agreement**

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. **Venue shall be in the County of El Paso, Texas.**

F. **Indemnification**

THE OWNER SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE ENGINEER INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE ENGINEER EXPRESSLY AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE OWNER, ITS OFFICERS, AGENTS,

AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE, LITIGATION, SETTLEMENT AND/OR PAYMENT OF JUDGMENT INCLUDING COURT COSTS AND ATTORNEY'S FEES, FOR BODILY INJURY, ILLNESS, PHYSICAL, OR MENTAL IMPAIRMENT TO, OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY INCLUDING THE LOSS OF USE THEREOF, ARISING FROM OR RELATING TO ANY ACT(S) OR OMISSIONS(S) OF THE ENGINEER, ITS PRINCIPALS OR OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT.

G. Authorization To Enter Into Agreement

If the Engineer signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of the Engineer warrants to the Owner that the Engineer is a duly authorized and existing corporation, that the Engineer is qualified to do business in the State of Texas, that the Engineer has full right and authority to enter into this Agreement, and that each and every person signing on behalf of the Engineer is authorized to do so. Upon the Owner's request, the Engineer shall provide evidence satisfactory to the Owner confirming these representations.

H. Entire Agreement

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

I. Remedies/Sanctions for Breach of Agreement

Violation or breach of any terms of this agreement by the Engineer shall be ground for terminating the Agreement, and any increased cost arising from the Engineer's default, breach, or violation of the terms herein shall be paid by the Engineer. The remedies herein reserved shall be cumulative and additional to any other or further remedies in law or equity. No waiver of a breach of any provisions of this Agreement shall constitute a waiver of any other breach of such provision.

J. Notices

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other shall be in writing and shall be either personally delivered or sent by certified mail-return receipt requested, to the following addresses:

To Owner The City of El Paso
 The City Manager
 Two Civic Center Plaza
 El Paso, Texas 79901-1196

with a copy to: City Engineer
 The City of El Paso
 Two Civic Center Plaza
 El Paso, Texas 79901-1196

To Engineer: Paragon Project Resources, Inc.
 Attn: William Correa, P.E.
 7929 Brookriver Drive Suite 600
 Dallas, Texas 75247-4955

VIII. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS

Engineer, at Engineer's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Engineer with respect to the use of federal funds and Nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Engineer agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or breach of any of the following covenants, Owner shall have the right to terminate this Agreement.

A. Anti-Kickback Rules

Salaries of Architects, Engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a

month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Engineer shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Section 3 Clause

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.
2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Engineer shall send to each labor organization, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The Engineer shall include this Section 3 clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Engineer shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Engineers and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.
6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
7. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Engineer shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Lessee shall also comply with the applicable provisions

of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

8. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement.

C. Access to Records

In accordance with OMB Circular A-102, Attachment "O", Sec. 4h, the Owner, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are directly pertinent to the Owner's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

D. Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.

E. Davis-Bacon Wages

In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Engineer shall base such estimates and the Project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the Project and must be followed and obeyed by the selected Engineer.

F. Termination for Cancellation of Grant

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Engineer of the cancellation by certified mail-return receipt requested, whereupon the Engineer shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Engineer will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

OWNER: THE CITY OF EL PASO

Joyce A. Wilson – City Manager

ENGINEER: Paragon Project Resources, Inc.

for By: William Correa, P.E. *Manuel Rosas*
Chief Executive Officer *President*

APPROVED AS TO FORM:

Theresa Cullen-Garney
Theresa Cullen-Garney
Deputy Attorney

APPROVED AS TO CONTENT:

Rick Conner
Rick Conner
City Engineer

APPROVED AS TO CONTENT:

Patrick Abeln
Director of Aviation

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

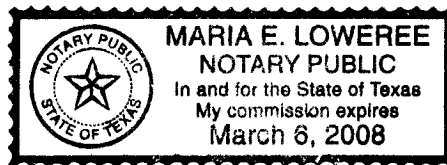
This instrument was acknowledged before me on this _____ day of _____, 2005 by Joyce A. Wilson, as City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 21st day of March, 2005, by ~~William Correa, P.E.~~ as ~~Chief Executive Officer~~ of Paragon Project Resources, Inc. MANUEL ROSAS PRESIDENT

Maria E. Lowerree
Notary Public, State of Texas



Attachment "A"

PROJECT SCOPE

TITLE: Construction Management Services for
the EPIA Pavement Rehabilitation Project

LOCATION: Runway 4-22 and Taxiway "H", Apron Taxilane "G",
FBO Apron Extension-El Paso International Airport

PROJECT BUDGET: \$700,000

GENERAL DESCRIPTION: The Consultant shall provide construction management and inspection services for the **EPIA Pavement Rehabilitation Project**. The Consultant shall follow all Federal Aviation Administration guidelines and requirements. See attached Scope of Services for details of the type of services covered.

SERVICES REQUIRED:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Investigation | <input checked="" type="checkbox"/> Planning |
| <input checked="" type="checkbox"/> Construction Management and Inspection | |

PRODUCTS REQUIRED:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Study / Report | <input checked="" type="checkbox"/> Plans, Specifications,
Estimates (if necessary) |
|--|--|

GENERAL REQUIREMENTS AND CRITERIA:

1. Design must meet all applicable City Codes and Ordinances.
2. Design must comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.
4. Consultant shall coordinate with City of El Paso Information Technology Department.
5. Consultant shall provide design for voice and data lines when applicable.

OTHER CONSIDERATIONS:

1. Work to be coordinated with the Engineering Department.

PROJECT SCHEDULE:

Project Schedule shall be for seven (7) months with option to renew for three additional

months.

SCOPE OF SERVICES

CONSTRUCTION MANAGEMENT SERVICES

1. Prior to issuance of initial notice to proceed, the Construction Manager will begin to ensure that the Contractor is following his Quality Control Plan. The results shall be provided to Engineering Department.
2. Review contractor's construction schedule and schedule of values and advise Owner. Negotiate with contractors construction schedule without creating change order.
3. Provide on-site project representation and inspection for all construction projects to include the following:
 - A. Perform inspection of the Contractor's work for conformance with the contract documents, city codes and ordinances.
 - B. Arrange for tests of materials and equipment as required for conformance with the contract documents, and document the results of the tests. Where tests indicate lack of conformance, initiate action to secure conformance. Track and manage the efforts of the materials testing firm. Inform owner and contractor, contractor's responsibility to pay for failed tests.
 - C. Note deficiencies in the contractor's work, cause corrections to be made before the contractor proceed with any further construction and check the remedial work.
 - D. Provide a record of tests made to verify quality of the work and conformance with contract documents.
 - E. Prepare and maintain daily inspector's reports including a narrative of the work in progress, notations on tests made, pertinent facts as to problem areas and recommended solutions, work force, equipment, and other matters essential to the project.
 - F. Request all testing and surveying services. Confirm survey layouts and controls for line, grade and dimension to confirm conformance with the plans and specifications.
 - G. Prepare responses to all Requests for Information (RFI) and Requests for Clarification (RFC).
 - H. All inspections shall be coordinated with the Engineering Department. Final inspection will be directed and approved by the Engineering Department Construction Division.
5. Construction Manager must be on-site during all construction activity including weekends and periods beyond normal working hours.
 - A. If contractor requests to work on weekends, holidays, and beyond normal working hours, construction manager shall obtain contractor's written request accepting that contractor will pay construction manager overtime for construction manager services. Letters shall be submitted to Engineering Department.
6. Establish and produce monthly program accounting reports. Provide cost and payment reports for each contract. Provide and maintain systems for accounting, reporting, filing, etc., as well as systems for the retention and recovery of records and

documents. Establish a backup system for all records and data maintained in electronic media (computer) format.

7. Develop and implement a system for monitoring construction in progress to ensure that deviations from cost, quality and completion dates are identified in a timely manner as a basis for corrective action. Work with the design engineers/architects and contractors to develop recovery plans if deviations occur.
8. Undertake any other tasks to ensure that the project will be built on schedule and within budget.
9. Submit weekly written progress reports to the City's representative. Monitor and update the program schedules and budgets. Conduct and attend periodic meetings with the City and the contractor.
10. Identify and assist the City in pursuing program warranty repairs.
11. Develop and implement a claims management system as well as a construction claims prevention program.
 - A. Review and evaluate claims from the Contractor as to validity under the terms of the contracts.
 - B. Prepare an independent itemized estimate of cost for claims appearing to be valid under the contract and reconcile with the contractor's estimate
12. Identify a schedule and critical path for long-lead items.
13. Ensure that Contractor develop and implement a program for construction/site/worker safety.
14. Administer Change Orders:
 - A. Assist the engineer/architect in the preparation of required construction documents for changes.
 - B. Prepare an independent cost estimate for each change.
 - C. In conjunction with the Engineering Department, conduct negotiations with the contractor and develop change orders to incorporate the changes or extra work into the contracts.
 - D. Process each Change Order and submit to the City for approval.
 - E. Obtain from Engineer/Architect thorough and detailed written explanation as for the reasons for change order
 - F. Provide opinion if change order is construction change order, design oversight or scope change.
15. Develop and implement a shop drawings tracking and filing system.
16. Substantial Completion: Upon substantial completion of the physical construction and installation of any facilities or systems for the project, furnish punch lists and check-out tests for facilities and systems required by the various specifications for the purpose of demonstrating to the City that the structural, civil, architectural, mechanical electrical and special equipment components and other furnishings have been correctly installed and are ready to be used and operated. Tests will be observed and/or approved by the City at their option.
 - A. Coordinate the development and submittal of operation and maintenance manuals and related materials for equipment and systems facilities as required.
 - B. Coordinated the development and submittal of "as-built" drawings. Transmit and maintain documentation of transmittal to the City.

ATTACHMENT "B"

Tentative Schedule with Pricing EPIA Pavement Rehabilitation Project CM Services

	Mar-05	Apr-05	May-05	Jun-05	Jul-05	Aug-05	Sep-05	Oct-05	
Submittals									
Mob									
NTP									
Phase I									
Test Stripe									
RWY 25 to 49									
Rwy 66 to 120									
Phase II									
Twy H									
Taxilane G									
Phase III - Taxilane G									
Phase IV - Taxilane G									
Phase V FBO									
Closeout									
Manpower needs in Percentage									
Project Manager	20%	40%	30%	20%	20%	20%	20%	20%	
Civil Inspector	20%	100%	100%	100%	100%	80%	20%	20%	
Clerk	20%	30%	20%	20%	20%	30%	20%	20%	
Manpower Hours									
Project Manager	35	69	52	35	35	35	35	35	Total 329
Civil Inspector	35	173	173	173	173	139	0	0	867
Clerk	35	52	35	35	35	52	35	35	312

Salary Expenses	Total Hrs.	Rate	Extended
Project Manager	329	\$90.00	\$29,610
Civil Inspector	867	\$85.00	\$73,667
Clerk	312	\$45.00	\$14,040
Principle	10	\$130.00	\$1,300
Subtotal Salary Expense	1518		\$118,617
Other Expenses	Qty	Rate	
PM Truck	0	\$900.00	\$0
Inspector Truck	5	\$900.00	\$4,500
Computer	5	\$500.00	\$2,500
FAA ATC Radio	1	\$400.00	\$400
Incidentals	5	\$50.00	\$250
Fedex	1	\$50.00	\$50
Subtotal Expenses			\$7,700
Grand Total			\$126,317

Escalation Calculation

Personnel	Cur. Rate	Escal./yr	New Rate	Rounded
	Est. 2002			
PM	85	3%	90.1765	90
Site Rep.	80	3%	84.872	85

Note these rates established in October 2002.